

Message Text

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S/S-MR. LUERS

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FM SECSTATE WASHDC

TO AMEMBASSY GEORGETOWN IMMEDIATE

C O N F I D E N T I A L STATE 215622

EXDIS

FOLLOWING REPEAT STATE 215622 ACTION KINGSTON INFO
PARAMARIBO SANTO DOMINGO PORT AU PRINCE 30 SEPTEMBER.

QUOTE

C O N F I D E N T I A L STATE 215622

EXDIS

E.O.11652: GDS

TAGS: EMIN, EINV, JA

SUBJECT: BAUXITE NEGOTIATIONS: PHASE II

1. WITH THE SECOND PHASE OF BAUXITE NEGOTIATIONS NOW
SCHEDULED TO BEGIN ON OCTOBER 1 WITH KAISER-GOJ TALKS, WE
BELIEVE IT IMPORTANT THAT WE MAKE IT KNOWN TO GOJ THAT
USG INTENDS TO FOLLOW TALKS CLOSELY AND THAT USG HAS
STRONG INTEREST IN THEIR OUTCOME. ACCORDINGLY, UNLESS
OBJECTION PERCEIVED, AMBASSADOR SHOULD SEEK EARLY APPOINT-
MENT WITH MANLEY FOR A TOUR D'HORIZON AS TO WHERE NEGOTIA-
TIONS NOW STAND AND TO EXPRESS US CONCERN THAT PHASE II
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TALKS RESULT IN A NEGOTIATED, RATHER THAN UNILATERALLY

IMPOSED SOLUTION.

2. IN YOUR DISCUSSION WITH MANLEY, WE BELIEVE THE FOLLOWING POINTS SHOULD BE MADE:

A. THE USG REGRETS THAT GOJ ACTED UNILATERALLY IN ESTABLISHING A NEW PRODUCTION LEVY WITHOUT AGREEMENT OF THE COMPANIES. WE ATTACH GREAT IMPORTANCE TO A NEGOTIATED SETTLEMENT OF ALL ISSUES INCLUDING THE REVENUE QUESTION.

B. USG PRIZES ITS CLOSE RELATIONS WITH THE GOJ BUT IT CANNOT BE INDIFFERENT TO ACTIONS WHICH IMPINGE ON US INTERESTS IN THE INTEGRITY OF INVESTMENT AGREEMENTS, IN THE EFFICACY OF ESTABLISHED PROCEDURES FOR THE SETTLEMENT

OF DISPUTES, AND, MOST IMPORTANT, IN THE PERFORMANCE OF TREATY OBLIGATIONS.

C. WE UNDERSTAND THAT JAMAICA HAS SERIOUS ECONOMIC PROBLEMS BUT WE CONTINUE TO HOPE THAT JAMAICA WILL DEAL WITH THEM IN A MANNER WHICH DOES NOT GIVE RISE TO DIRECT ISSUES BETWEEN OUR GOVERNMENTS AS WOULD BE THE CASE, SHOULD A NEGOTIATED SOLUTION MUTUALLY SATISFACTORY TO ALL PARTIES NOT BE ACHIEVED. FAILURE OF NEGOTIATIONS WOULD PRESENT A NUMBER OF SERIOUS QUESTIONS FOR DECISION BY THE USG. THESE QUESTIONS COULD ARISE IN THREE POSSIBLE CONTEXTS:

(1) LEGAL ACTIONS IN US COURTS BY THE COMPANIES TO ENFORCE AN ICSID AWARD AGAINST JAMAICAN ASSETS IN THE US, SHOULD JAMAICA FAIL TO HONOR SUCH AWARD.

(2) POSSIBLE PROCEEDINGS IN THE WORLD COURT TO DECIDE QUESTIONS ARISING UNDER THE ICSID CONVENTION; AND

(3) RELEVANT US LEGISLATION WHICH REFERS SPECIFICALLY TO ARBITRATION (HICKENLOOPER AMENDMENT) AND ICSID (GONZALES AMENDMENT).

IT IS IN EVERYONE'S INTEREST THAT THESE QUESTIONS NOT ARISE; A NEGOTIATED SETTLEMENT IS CLEARLY THE BEST
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SOLUTION.

D. WE UNDERSTAND THAT JAMAICA CANNOT LOOK WITH ENTHUSIASM UPON AN ADJUDICATION OF THIS QUESTION IN ICSID. THE ONLY COMPLETELY SATISFACTORY SOLUTION IS A NEGOTIATED SETTLEMENT OF THE WHOLE PROBLEM. HOWEVER, ICSID IS THE MACHINERY THAT HAS BEEN ACCEPTED TO RESOLVE MATTERS THAT CANNOT BE SETTLED BY MUTUAL AGREEMENT. ITS PURPOSE IS TO AVOID

CONFRONTATIONS, AND IF NEGOTIATIONS SHOULD FAIL IT CAN PLAY A CONSTRUCTIVE ROLE IN THAT REGARD. IN THIS REGARD, THE USG IS CONCERNED THAT THE ACTION TAKEN BY JAMAICA TO AMEND ITS LEGISLATION TO LIMIT THE RECOGNITION OF ICSID AWARDS IN JAMAICAN COURTS DOES NOT COMPORT WITH JAMAICA'S OBLIGATIONS UNDER ICSID CONVENTION TO ALL THE CONTRACTING STATES.

E. WE DO APPRECIATE THE STEPS THAT THE PRIME MINISTER AND HIS NEGOTIATORS HAVE TAKEN TO KEEP THE US CLOSELY INFORMED OF DEVELOPMENTS IN THE TALK; AND WE HOPE THEY WILL CONTINUE TO DO SO. WE WISH TO KEEP LINES OF COMMUNICATION OPEN. IN THE PAST WE HAVE BELIEVED THAT THE USG COULD BE MOST HELPFUL BY ENCOURAGING AND

SUPPORTING THE EFFORTS OF BOTH SIDES TO REACH A MUTUALLY AGREEABLE SOLUTION AND WE CONTINUE TO BELIEVE THAT THIS IS THE PROPER ROLE FOR THE USG IN THIS MATTER.

3. FYI. WE DO NOT WISH AT THIS TIME TO TAKE A POSITION ON THE SUBSTANCE OF PARTICIPATION NEGOTIATIONS, BEYOND THE ABOVE CALL FOR A MUTUALLY ACCEPTABLE OUTCOME. ASSISTANT SECRETARY ENDERS' DISCUSSIONS WITH THE REPRESENTATIVES OF THE COMPANIES, SEPTEMBER 6 AND 11, INDICATE THAT THE COMPANIES HAVE VARYING POSITIONS ON THE PARTICIPATION QUESTION. AT THIS POINT, HOWEVER, NONE APPEARS WILLING TO SETTLE ON PHASE II ISSUES WITHOUT A REVISION OF THE REVENUE FORMULA IMPOSED BY THE GOJ. THEY ALSO DESIRE A 'PACKAGE' SETTLEMENT OF ALL ISSUES, AS THEY FEAR THAT OTHERWISE WHAT MAY BE RENEGOTIATED RELATIVE TO PHASE I COULD BE TAKEN AWAY IN PHASE II. THE INTERESTS OF THE US ECONOMY ARE CLOSELY INVOLVED IN THE REVENUE ISSUE, WHICH WE DO NOT VIEW AS SATISFACTORILY RESOLVED ON

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THE BASIS OF THE STATUS QUO TODAY. END FYI. INGERSOLL
UNQUOTE INGERSOLL

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